

Short Title: Will/Correct Mistake/Achieve Tax Objective.

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE JUDICIAL REFORMATION OF WILLS TO CORRECT  
MISTAKES AND THE JUDICIAL MODIFICATION OF WILLS TO ACHIEVE THE  
TESTATOR'S TAX OBJECTIVES AND TO AUTHORIZE THE CLERK OF  
SUPERIOR COURT TO ASSESS A FEE FOR THE FILING OF AN ACTION FOR  
REFORMATION OR MODIFICATION OF A WILL.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 31 of the General Statutes is amended by adding a new Article to  
read:

"Article 10.

"Reformation or Modification of Wills.

**"§ 31-61. Reformation of a will to correct mistakes.**

In accordance with this Article, the court may reform the terms of a will, if the terms of  
the will are ambiguous, to conform the terms to the testator's intent if it is proved by clear and  
convincing evidence what the testator's intent was and that the terms of the will were affected by  
a mistake of fact or law, whether in expression or inducement.

**"§ 31-62. Modification of a will to achieve the testator's tax objectives.**

In accordance with this Article, the court may modify the terms of a will in a manner that  
is not contrary to the testator's probable intent to achieve the testator's tax objectives. The court  
may provide that the modification has retroactive effect.

**"§ 31-63. Filing of action for reformation or modification of a will.**

1       (a)     An action for reformation or modification of a will under this Article may be filed  
2 in the superior court division of the General Court of Justice within three years of the date of the  
3 probate of the will by any party interested in the estate. An action under this Article also may be  
4 filed by any interested party in a proceeding for probate of a will in solemn form under G.S.  
5 28A-2A-7 or a proceeding to caveat a will under Article 6 of this Chapter. After the filing of an  
6 action under this Article, any interested party may initiate a caveat proceeding in order for the  
7 action to be considered in the caveat proceeding. If the action is adjudicated in a proceeding to  
8 probate the will in solemn form or in a caveat proceeding, the court shall consider the action  
9 upon the verdict of a jury.

10       (b)     If a will has been previously probated in solemn form under G.S. 28A-2A-7 or  
11 has been the object of a previous caveat proceeding, any party who was properly served in that  
12 probate in solemn form or caveat proceeding is barred from filing an action under this Article.

13       (c)     The personal representative is a necessary party to an action commenced under  
14 this Article.

15       (d)     Upon the filing of an action under this Article, the complaint to initiate the action  
16 shall be served upon all interested parties. If the action is not filed in a proceeding to probate the  
17 will in solemn form or in a caveat proceeding, the complaint filed to initiate the action shall so  
18 state, and shall state all of the following:

19               (1)     Any party interested in the estate may initiate a caveat proceeding under  
20                       Article 6 of this Chapter within 30 days of the service of the complaint  
21                       filed in the action.

22               (2)     If no party initiates a caveat proceeding to adjudicate the action within 30  
23                       days of the service of the complaint, then any party who was properly

served is barred from thereafter initiating a caveat proceeding as to the  
will.

**"§ 31-64. Settlement agreement; filing of judgment.**

(a) Prior to an entry of judgment by the superior court in an action under this Article,  
the parties may enter into a settlement agreement, which must be approved by the superior court.  
Upon approval of a settlement agreement, the court shall enter judgment, without a verdict by a  
jury, in accordance with the terms of the settlement agreement.

(b) When judgment is entered by the superior court in an action under this Article, the  
clerk shall file a copy of the judgment in the estate file."

**SECTION 2.** G.S. 28A-2-4(c) reads as rewritten:

"(c) Without otherwise limiting the jurisdiction of the Superior Court Division of the  
General Court of Justice, the clerk of superior court shall not have jurisdiction under subsection  
(a) or ~~(c)~~(b) of this section of the following:

- (1) Actions by or against creditors or debtors of an estate, except as provided  
in Article 19 of this Chapter.
- (2) Actions involving claims for monetary damages, including claims for  
breach of fiduciary duty, fraud, and negligence.
- (3) Caveats, except as provided under G.S. 31-36.
- (4) Proceeding to determine proper county of venue as provided in G.S. 28A-  
3-2.
- (5) Recovery of property transferred or conveyed by a decedent with intent to  
hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b).

(6) Actions for reformation or modification of wills under Article 10 of Chapter 31 of the General Statutes."

**SECTION 3.** G.S. 7A-307 reads as rewritten:

**"§ 7A-307. Costs in administration of estates.**

(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, in trust proceedings under G.S. 36C-2-203, in estate proceedings under G.S. 28A-2-4, and in collections of personal property by affidavit, the following costs shall be assessed:

...

(5) For the filing of a caveat to a ~~will~~, will under Article 6 of Chapter 31 of the General Statutes, the clerk shall assess for support of the General Court of Justice, the sum of two hundred dollars (\$200.00). If a fee has been assessed in an estate file pursuant to this subdivision for the filing of a caveat to a will, then no additional cost shall be assessed for the filing of a complaint to initiate an action for reformation or modification of the will under Article 10 of Chapter 31 of the General Statutes if the complaint is filed in the same proceeding as the caveat.

(5a) For the filing of a complaint to initiate an action for reformation or modification of a will under Article 10 of Chapter 31 of the General Statutes, the clerk shall assess for support of the General Court of Justice, the sum of two hundred dollars (\$200.00). If a fee has been assessed in an estate file pursuant to this subdivision for the filing of an action for reformation or modification of a will, then no additional cost shall be assessed for the filing of a caveat to the will under Article

1                   10 of Chapter 31 of the General Statutes if the caveat is filed in the same  
2                   proceeding as the action for reformation or modification of the will.

3                   ....”

4                   **SECTION 4.** This act becomes effective January 1, 2018, and applies to estates of  
5                   decedents dying before, on, or after that date.